

# COUNTY OF TRAVIS

## STATE OF TEXAS

Herb Evans

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### Small Claims Case:

*A small claims case is a lawsuit brought for the recovery of money damages, civil penalties, or personal property. The claim can be for no more than \$10,000 excluding statutory interest and court costs but including attorney fees, if any. Small claims cases are governed by **Rules 500-507 of Part V of the Rules of Civil Procedure**.*

### Debt Claim:

*A debt claim case is a lawsuit brought to recover a debt by an assignee of a claim, a debt collector or collection agency, a financial institution, or a person or entity primarily engaged in the business of lending money at interest. The claim can be for no more than \$10,000 in damages, excluding statutory interest and court costs but including attorney fees, if any. **Debt claim cases in justice court are governed by Rules 500-507 and 508 of Part V of the Rules of Civil Procedure. To the extent of any conflict between Rule 508 and the rest of Part V, Rule 508 applies.***

## FILING A LAWSUIT IN JUSTICE COURT

1. To institute a lawsuit within the above-described limitations, complete the documents entitled "Plaintiff's Original Petition" and the "Justice Court Civil Case Information Sheet".

### Checklist:

- 1.) Provide the Court with a daytime phone number and notify us immediately of changes in your address or phone number.
- 2.) Be as specific as you can about the named Defendant and the capacity in which he/she is being sued. The three most common legal entities are:
  - a) Individual (i.e., Joe Doe)
  - b) Sole proprietor or Partnership (i.e., John Jones dba Sparkle Cleaners)
  - c) Corporation (i.e., Superior Builders, Inc.)
- 3.) Verification of "military status" of individual (U.S. Members Civil Relief Act of 2003)
  - a) A "Military Affidavit" must be on file when proceeding into the courtroom for a hearing
  - b) A request for Military Status from the Department of Defense Manpower Data Center can be obtained from the following web site: <https://www.dmdc.osd.mil/appj/scra/scraHome.do>

**Your failure to properly name a Defendant could result in your losing the lawsuit or being unable to collect on a Judgment.**

For information concerning **Assumed Names** call: County Clerk's Office, Assumed Names Department, **512.854.9188** or Secretary of State Partnership and Assumed Names Division, **512.463.5582**. You must ask for the name and address of the Owner(s) or Partner(s).

For information concerning **Corporation Names and Agents for Service**, call Secretary of State Charter Division, **512.463.5555**. You must ask for the name and address of the Registered Agent.

2. When you have completed the Petition, a Constable/Sheriff will serve a Citation attached to a copy of your Petition. The Citation will notify the Defendant of the time in which to **Answer** the lawsuit. You should receive a postcard informing you when the Defendant has been served. Defendant's Answer Time is computed as follows: count fourteen (14) full days after the day of service.

Example: Defendant served on Thursday, May 16

S	M	T	W	TH	FR	SAT
12	13	14	15	<b>16</b>	17	18
19	20	21	22	23	24	25
26	27	28	29	<b>30</b>	31	

Count fourteen (14) full days after the 16<sup>th</sup>, i.e., May 30<sup>th</sup>.  
Defendant's Answer Time in the example is up on May 30<sup>th</sup>.

\*\*\*If the 14<sup>th</sup> day is a Saturday, Sunday, or legal holiday, the answer is due on the next day that is not a Saturday, Sunday, or legal holiday and if the 14<sup>th</sup> day falls on a day during which the court is closed before 5:00 PM, the answer is due on the court's next business day.

If the Defendant does not enter an Answer within the allotted time, you are entitled to receive a default judgment, meaning a short hearing will be held before the judge. You will need to submit a written request for the Court to schedule a time for your Default Judgment Hearing (these are normally held Monday, Tuesday or Thursday at 1:30 P.M.). Please prepare your documents or testimony in advance of the hearing to show the judge exactly how you arrived at the amount of damages in your petition. **Be aware that the Defendant can file an Answer with the Court at any time before the Judgment is entered, which will entitle him/her to a Contested Hearing.**

3. Mediation: It is the policy of this state to encourage the peaceable resolution of disputes through alternative dispute resolution, including mediation, and the early settlement of pending litigation through voluntary settlement procedures. For that purpose, the judge may order any case to mediation or another appropriate and generally accepted alternative dispute resolution process. (RULE 503.5, PART V, T.R.C.P.)
4. Cases are set for Contested Hearings upon written request of either party. If a Contested Hearing is held, the Plaintiff has the burden of proving his/her claim to the Court. The Court will consider only testimony and other evidence available in the Courtroom at the time of the Trial. Involuntary witnesses may need to be subpoenaed. Please be aware that notarized statements from individuals, although admissible, have little value compared to live testimony. You should have copies of all documents you intend to use as evidence available for the Court and Defendant.
5. This Court does not collect the judgment, nor can it force the Defendant to pay the judgment. It is very difficult to collect a money judgment in Texas. Our law provides that only non-exempt property of the judgment debtor may be seized to satisfy the judgment. Most judgment debtors do not have non-exempt property; in other words, most people have only exempt property. This means that even though you might obtain a judgment against someone, it is likely you may never recover any money. Please consider this before you take the time and expense of filing a lawsuit. There are Alternatives to filing a lawsuit, such as the Dispute Resolution Center, Better Business Bureau, Austin Apartment Association, Austin Board of Realtors, Texas Department of Licensing and Regulation, Texas Department of Insurance, the Texas Workforce Commission, and other organizations and agencies which might better service your needs.

If you receive a Judgment for your claim against the Defendant, you may request an Abstract of Judgment and/or a Writ of Execution to help you in your collection of this Judgment. More information about these and other post judgment remedies is available in the section titled "**Collecting Your Judgment.**"

6. Court Costs for Justice Court suits are as follows:
- \$46.00 Filing Fee;
  - \$75.00 Service Fee for each party served (if the person for service is located in Travis County). If service is to be performed outside the county, please see the Court Clerk for information about other fees (a separate check or money order is required for each personal service outside Travis County);
  - \$22.00 Demand for Jury
  - \$5.00 for issuance of an Abstract of Judgment;
  - \$5.00 for issuance of a Writ of Execution;
  - \$220.00 for executing the Writ of Execution (if the Writ is executed in Travis County). If the Writ is to be executed outside of Travis County, check with the court clerk for that fee.

## COLLECTING YOUR JUDGMENT

It is very difficult to collect a money judgment in Texas. Our law provides that only non-exempt property of the judgment debtor may be seized to satisfy the judgment. Most judgment debtors do not have non-exempt property; in other words, most people have only exempt property. This means that even though you might obtain a judgment against someone, it is likely you may never recover any money. Please consider this before you take the time and expense of filing a lawsuit. There are Alternatives to filing a lawsuit, such as the Dispute Resolution Center, Better Business Bureau, Austin Apartment Association, Austin Board of Realtors, Texas Department of Licensing and Regulation, Texas Department of Insurance, the Texas Workforce Commission, and other organizations and agencies, which might better service your needs.

If you do decide to file a lawsuit and you obtain a judgment, you may follow these steps to try to collect your judgment.

1. We suggest that you wait until the appeal time runs out before you do anything. The appeal time is 5 days in Eviction cases and 21 days for other Justice Court cases (Small Claims and Debt Claim cases).
2. After the Judgment is rendered, and the appeal period has expired, you may obtain an Abstract of Judgment from this office. You may file the Abstract with the County Clerk in Travis County or any county in which the judgment debtor has real property. The Justice of the Peace Court fee is \$5.00 and there is an additional recording fee in the County Clerk's office at the time of filing. The Abstract informs the County in which it is filed that there is a Judgment against the debtor and it creates a Judgment Lien on the debtor's real estate in that county. The judgment will probably be picked up by credit reporting agencies and be noted on the debtor's credit report. You may file this Abstract in as many counties in Texas as you wish. There will be a fee each time it is recorded.
3. Thirty days after Judgment, you may obtain a Writ of Execution from this office to attempt to seize the debtor's non-exempt property to satisfy the Judgment. The fee for this Writ is \$225.00, which includes the cost of production of the document and its execution. Before you pursue this remedy, you should determine whether the debtor has non-exempt property. To do this, you must rule out the debtor's exempt property, as follows:

- The homestead is exempt. This means a house and up to one acre of land in an urban area, or a house and up to 200 acres of land in a rural area;
- Current wages for personal services, certain unpaid commissions for personal service, and certain health aids are exempt;
- Personal property that is eligible and that has an aggregate fair market value of not more than \$60,000 is exempt if the debtor is married or otherwise part of a family, and \$30,000 if the debtor is a single adult not a member of a family;

The following items of personal property are eligible for exemption within above monetary limits:

- 1) Home furnishings, including family heirlooms;
- 2) Provisions for consumption;
- 3) Farming or ranching vehicles and implements; tools, equipment, books, and apparatus, including boats and motor vehicles used in a trade or profession; clothing; jewelry (not to exceed 25% of the aggregate); two firearms; athletic and sporting equipment;
- 4) A 2, 3, or 4 wheeled motor vehicle for each family member who holds a driver's license;
- 5) Certain farm animals and forage on hand reasonably necessary for their consumption;
- 6) Household pets;
- 7) Cash surrender value of certain life insurance policies.

If a judgment debtor has no non-exempt property, you cannot execute on your judgment.

There are other remedies available in addition to the Writ of Execution, but they are even more complex. Relevant law for these remedies can be found in the Texas Property Code, the Texas Civil Practice Remedies Code, the Texas Rules of Civil Procedure, and elsewhere. The best advice is to consult an attorney.

**\*\*\* This information sheet is not intended to constitute legal advice or to take the place of an attorney. The Justice of the Peace and the court clerks are prohibited by law from giving legal advice. The law concerning the collection of judgments is complex and can be explained properly by an attorney.**